

MEMORANDUM TO: David M. Spooner  
Assistant Secretary  
for Import Administration

FROM: Stephen J. Claeys  
Deputy Assistant Secretary  
for Import Administration

SUBJECT: Issues and Decision Memorandum for the Administrative Review  
of the Antidumping Duty Order on Certain Malleable Iron Pipe  
Fittings From the People's Republic of China

Summary

We have analyzed the May 2006 case and rebuttal briefs of interested parties in the 2003-2004 administrative review of the antidumping duty order on certain malleable iron pipe fittings from the People's Republic of China ("PRC"). The period of review ("POR") is December 2, 2003, through November 30, 2004. As a result of our analysis, we have made changes in the margin calculation for four respondents. In addition, we identified several clerical errors in Certain Malleable Iron Pipe Fittings From the People's Republic of China: Notice of Preliminary Results of Antidumping Duty Administrative Review, 70 FR 76234 (December 23, 2005) ("Preliminary Results"), as identified below, and we corrected those errors for these final results. We recommend that you approve the positions that we developed in the "Discussion of the Issues" section of this memorandum. Below is the list of the issues for which we received comments and rebuttal comments by parties in these reviews, as well as additional ministerial errors that we have discovered in the course of our analysis of the preliminary results calculations:

1. SLK: Partial Facts Available for Missing Factors of Production ("FOP")
2. SLK: Partial Facts Available for Missing Purchase Quantities
3. SLK: By-product Offset for Scrap
4. By-product Offset for SLK's Supplier
5. SLK: Double Counting of Steel Scrap and Pig Iron
6. SLK: Application of Average Packing FOP
7. SLK: Calculation of Total U.S. Price
8. SLK: Use of Most Recently Submitted Data
9. SLK: Treatment of U.S. Warehousing Expense

10. Pannext: FOP Data
11. Pannext: Treatment of Ocean Freight
12. Pannext: Calculation of Entered Value
13. Pannext: Calculation of Normal Value Using Facts Available
14. Chengde: Adverse Facts Available (“AFA”)
15. Chengde: Recycled Scrap
16. Treatment of Steel Sand, Woven Bags, Cooling Liquid, Clay, Firewood, and Silicon Sand
17. Freight: Application of Sigma Rule
18. Valuation of Water
19. Wooden Pallet Clerical Error

## **Background**

On December 23, 2005, the Department of Commerce (“Department”) published the preliminary results of the administrative review of the antidumping duty order on malleable iron pipe fittings (“malleable pipe”) from the PRC. See Preliminary Results. In our Preliminary Results, the Department stated we would provide the respondents with additional opportunity to explain the methodology used and to correct certain deficiencies identified in their questionnaire responses and reported data. Accordingly, the Department received supplemental questionnaire responses after the Preliminary Results from Langfang PanNext Pipe Fittings Co., Ltd. and its U.S. affiliate, PanNext Fittings Corporation (“Pannext”), on January 20, and March 27, 2006, from SCE Development (Canada) Co. Ltd. (“SCE”) on March 7, 2006, from Chengde Malleable Iron General Factory (“Chengde”) on March 14, 2006, and from LDR Industries Inc. (“LDR”) and Beijing Sai Lin Ke Hardware Co., Ltd. (collectively “SLK”) on March 15, May 23 and May 30, 2006.

On April 6, 2006, the Department published a notice extending the time limit for the completion of the final results of this review until June 21, 2006. See Notice of Extension of Time Limit for Final Results of Antidumping Duty Administrative Review: Certain Malleable Iron Pipe Fittings From the People’s Republic of China, 71 FR 17439 (April 6, 2006); see also Notice of Correction to Notice of Extension of Time Limit for Final Results of Antidumping Duty Administrative Review: Certain Malleable Iron Pipe Fittings From the People’s Republic of China, 71 FR 25148 (April 28, 2006).

On April 12, 2006, Anvil International, Inc. and Ward Manufacturing (collectively “the petitioners”) submitted notice that they did not intend to request a hearing in this segment. As there were no requests for a hearing, the Department did not conduct a hearing in this review.

We invited interested parties to comment on our Preliminary Results. On May 1, 2006, the Department received case briefs from the petitioners, SLK, and Pannext. On May 8, 2006, we received rebuttal briefs from the petitioners, SLK, and Pannext. Chengde and SCE did not submit case or rebuttal briefs. On May 24, 2006, the petitioners submitted comments on SLK’s May 23, 2006, submission; on May 25, 2006, SLK submitted rebuttal comments. The

Department learned from the petitioners' case brief that Chengde failed to serve them the proprietary version of its revised March 16, 2006, supplemental questionnaire response or the electronic U.S. sales and FOP databases. Upon learning about Chengde's lack of proper service, the Department instructed Chengde to serve the petitioners a complete copy of the proprietary version of its response, and provided all interested parties an additional briefing period to comment on this response. We did not receive any comments from interested parties in response to this briefing opportunity.

We conducted this review in accordance with sections 751 and 777 of the Tariff Act of 1930, as amended ("Act"), and 19 C.F.R. 351.213 and 351.221 (2005).

## **Discussion of the Issues**

### **SLK: Partial Facts Available for Missing FOPs**

**Comment 1:** The petitioners argue that the Department should apply AFA to value the sales of merchandise which SLK purchased from a supplier ("Supplier A"<sup>1</sup>) that did not provide FOP data because of claims that its books and records were confiscated by the local Chinese government. The petitioners assert that SLK and Supplier A have not acted to the best of their ability to provide the requested FOP data. Specifically, according to the petitioners, SLK was not forthcoming regarding Supplier A's inability to report the FOP data until February 17, 2005, which was after its initial attempt to avoid reporting this data by claiming it to be "insignificant" to the overall margin. The petitioners contend that if SLK had problems obtaining FOP data from its suppliers, it should have informed the Department of this at the outset of the review instead of initially arguing that it should not be required to report the FOP data of its smallest suppliers.

Citing Foundry Coke from the People's Republic of China: Notice of Preliminary Results of Antidumping Duty Administrative Review, 68 FR 57869, 57873 (October 7, 2003) ("Foundry Coke from the PRC"), the petitioners argue that the Department has often found that the actions of the supplier in failing to provide FOP data are attributed to the exporter. In Foundry Coke from the PRC, the Department determined that it was the exporter's responsibility to submit accurate FOP information as the party that is seeking the rate based on the FOP information and any "failures, even if made by a supplier, may provide grounds for the application of adverse facts available."<sup>2</sup>

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<sup>1</sup> For further information on the names of the suppliers, see proprietary Memorandum to the File entitled, "Beijing Sai Lin Ke Hardware Co., Ltd.'s Proprietary Supplier Information," dated June 21, 2006.

<sup>2</sup> See also Freshwater Crawfish Tail Meat from the People's Republic of China: Notice of Final Results of Antidumping Duty Administrative Review, 68 FR 19504, (April 21, 2003), and accompanying Issues and Decision Memorandum, at Comment 7; and Fresh Garlic From the People's Republic of China: Final Results of Antidumping Duty New Shipper Review, 68 FR 36767, 36768 (June 19, 2003).

The petitioners argue that there is nothing on the record of this review that states that Supplier A does not have copies of its financial data and, thus, would not be able to provide the Department with the required information. The petitioners cite the decision in the Notice of Final Determination of Sales at Less than Fair Value: Creatine Monohydrate from the People's Republic of China, 64 FR 71104, 71108 (December 20, 1999) ("Creatine from the PRC Final"), where the Department stated that its practice is to require convincing evidence from exporters claiming that their suppliers cannot supply requested FOP information.<sup>3</sup> The petitioners claim that the actions of SLK and Supplier A do not constitute the "maximum effort" required in responding to requests for information from the Department.<sup>4</sup> The petitioners contend that the Department must ensure that an exporter does not benefit by selectively providing FOP information from low-cost producers.<sup>5</sup> In cases such as this, the petitioners assert, the Department is precluded from measuring the costs of those suppliers that refused to cooperate, and should not assume that their costs resemble those of other suppliers that did cooperate.<sup>6</sup> The petitioners argue that there is no reason to believe that Supplier A is as efficient as SLK's other suppliers that did provide FOP data and that the burden should be placed on Supplier A to provide its FOP data. The petitioners note that in the Preliminary Results, 70 FR at 76238, the Department stated that the purpose of applying an adverse inference is to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.<sup>7</sup> Thus, the petitioners assert that SLK may receive a more favorable result by failing to provide FOP data from Supplier A, if Supplier A was not as efficient as the other suppliers that did provide FOP data.

For these reasons, the petitioners argue that for the final results the Department should apply AFA to value the products that were purchased from Supplier A. However, if the Department decides not to apply AFA, the petitioners contend that it should apply facts available in the following manner. For those products that SLK obtained from Supplier A which SLK also purchased from other suppliers, the Department should apply the largest FOP reported by any of the other suppliers for each CONNUM. For those products produced only by Supplier A, the Department should apply the largest FOP for the next most similar product for which another supplier provided FOP data. The petitioners contend that applying facts available in this manner would reflect the FOP data of the least efficient of the suppliers that did report FOP data.

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<sup>3</sup> See also Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China: Final Results of 1997- 1998 Antidumping Duty Administrative Review and Final Results of New Shipper Review, 64 FR 61837, 61846 (November 15, 1999).

<sup>4</sup> See Shandong Huarong General Group Corporation and Liaoning Machinery Import & Export Corporation v. United States, Slip-Op 2003-135 (CIT 2003) ("Shandong Huarong") at 36.

<sup>5</sup> See Creatine from the PRC Final, 64 FR 71104, 71108.

<sup>6</sup> Ibid., at 71109

<sup>7</sup> See Statement of Administrative Action (SAA) accompanying the URAA, H.R. Doc. No. 316, 103<sup>rd</sup> Cong., 2<sup>nd</sup> Session at 870 (1994).

SLK counters that the Department properly applied neutral facts available for the products supplied by Supplier A in the Preliminary Results. SLK claims it is unable to provide certain FOP data because Supplier A's books and records for the POR were confiscated by the local Chinese government. SLK maintains that it has acted to the best of its ability to provide the Department with the requested information as noted by the Department in the Preliminary Results.<sup>8</sup>

Further, SLK argues that the petitioners have not pointed to anything on the record that would justify a change to the Department's determination in the Preliminary Results. SLK claims that the circumstances are beyond its and Supplier A's control and that, despite the difficulties with Supplier A, it has acted to the best of its ability to provide an otherwise complete response. Moreover, SLK refutes the petitioners' claim that it did not act to the best of its ability to notify the Department, as its counsel had a telephone conversation with Department officials where it provided a detailed explanation of its circumstances.<sup>9</sup>

SLK disagrees with the petitioners' claim that there is nothing on the record that would indicate Supplier A withheld any further information documenting its difficulties in providing the requested FOP information. SLK argues that there is no evidence that would support such an allegation and points to the fact that SLK had documented and certified the details of the circumstances surrounding the confiscation of Supplier A's books.

SLK points out that the petitioners recognize the small volume and the negligible impact that Supplier A's inputs have on SLK's overall margin, and thus, SLK contends that there is no evidence on the record that would suggest SLK obtained a favorable result by not providing Supplier A's data. SLK claims that its request to limit its reporting of certain FOPs was based on the fact that preparing the responses from multiple suppliers represented a significant administrative burden and the fact that the data from the smallest suppliers would have made a negligible impact on its overall margin. Further, SLK argues that its request was consistent with the Department's normal practice in investigations of allowing respondents not to report FOP data from suppliers that supplied less than 5 percent of overall volume of the subject

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<sup>8</sup> See Preliminary Results at 76238.

<sup>9</sup> See Memorandum to the File from Coleen Schoch: "First Administrative Review of the Antidumping Order on Certain Malleable Iron Pipe Fittings from the People's Republic of China; Meeting with Counsel of the Respondents Beijing Sai Lin Ke Hardware Co., Ltd, and Langfang Pannext Pipe Fitting Co.," dated February 12, 2005 ("Memorandum from Coleen Schoch").

merchandise.<sup>10</sup> SLK argues that in the Lined Paper investigation,<sup>11</sup> for example, the Department allowed a respondent not to report normal value information for its minor suppliers. Thus, SLK concludes, consistent with that determination, for this case the Department determined the appropriate facts available to apply to the FOPs and sales of subject merchandise. For these reasons, SLK argues the Department should continue to apply neutral facts available with respect to Supplier A's data for the final results.

**Department's Position:** Consistent with the Preliminary Results, the Department has continued for these final results to apply neutral facts available for the FOPs of products SLK sourced from Supplier A. Specifically, in the Preliminary Results, the Department used as facts available, the weighted-average CONNUM-specific FOPs (weighted by purchased quantity) of SLK's other suppliers. For those products sourced only from Supplier A, we applied SLK's weighted-average margin calculated for its other reported U.S. sales. According to section 776 of the Act, the Department may use facts available with an adverse inference when it has determined that an interested party "has failed to cooperate by not acting to the best of its ability to comply with a request for information." To determine if an interested party has acted to the best of its ability, a case-by-case assessment must be made. In this case, we determined that SLK and the supplier in question both acted to the best of their ability to provide the Department with the requested information and thus, for the purposes of these final results, we find that an adverse inference is not warranted.

SLK contacted the Department prior to submitting its initial questionnaire response at the beginning of this review and, upon its request, met with Department officials to ask that it be allowed to omit from its response the FOPs for CONNUMs provided by Supplier A due to unexplained difficulties. See "Memorandum from Coleen Schoch," dated February 12, 2005. We declined this request at the time because SLK did not state the reasons for its difficulties and instructed SLK to follow the instructions outlined in the Department's initial questionnaire. In its initial questionnaire response, SLK stated that Supplier A was unable to provide FOPs for the CONNUMs it supplied to SLK during the POR, and provided, as an alternative methodology to the Department, FOPs for these CONNUMs based on Supplier A's standard production formula in an attempt to comply with the Department's requests. See D6-6 of SLK's May 4, 2005, Section C and D questionnaire response. The Department issued SLK a supplemental questionnaire asking it to explain why it provided the standard production formula rather than actual amounts of factors consumed. See First Supplemental Questionnaire for LDR Industries,

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<sup>10</sup> See Memorandum to the File from Marin Weaver: "In the Investigation of Certain Lined Paper Products from the People's Republic of China; Re: Atico International (HK) Ltd. and Atico Overseas Ltd.," dated January 18, 2006.

<sup>11</sup> See Preliminary Determination of Sales at Less Than Fair Value, Affirmative Critical Circumstances, In Part, and Postponement of Final Determination: Certain Lined Paper Products from the People's Republic of China, 71 FR 19695 (April 17, 2006), as amended in Notice of Amended Preliminary Determination of Sales at Less Than Fair Value: Certain Lined Paper Products from the People's Republic of China, 71 FR 31159 (June 1, 2006) ("Lined Paper").

Inc. and Beijing Sai Lin Ke Hardware Co. Ltd., dated July 12, 2005. In response to the Department's July 12, 2005, supplemental questionnaire, SLK explained why it was unable to provide FOPs for the CONNUMs supplied by Supplier A. Because of the proprietary nature of this discussion, we can not provide full detail here. For further information, see the proprietary memorandum from Jennifer Moats to the File entitled, "Beijing Sai Lin Ke Hardware Co., Ltd.'s Missing Factors of Production Information from Supplier A," dated June 21, 2006, and Exhibit SD6-4 of SLK's August 10, 2005, response (collectively, "Supplier A Support"). SLK included in its response documentation supporting its reasons why it could not provide the FOP information requested by the Department.

The petitioners' argument with respect to Foundry Coke from the PRC is misplaced. In that case, the supplier at issue did not provide any explanation or documentation for either its inability to respond to the Department's requested information or offer alternative forms of complying with the Department's requests to supply complete FOP information. Thus, the Department determined that the supplier, by failing to produce the requested information, engaged in a pattern of non-compliance and also failed to put forth maximum efforts to obtain the requested information from its records. See Foundry Coke from the PRC, 68 FR at 57873-57874. As discussed in Creatine from the PRC Final, 64 FR at 71108, the Department requires convincing evidence from exporters that the supplier cannot provide the requested FOP information. In reviewing the record of this review, we find that SLK provided convincing information (*i.e.*, see Supplier A Support) that Supplier A could not provide the actual FOP information requested by the Department. Moreover, SLK attempted to provide the Department with an alternative methodology to account for Supplier A's missing FOPs.<sup>12</sup> Thus, we continue to find that SLK and its supplier acted to the best of their ability to comply with the Department's instruction to provide FOPs for Supplier A, and we continue to apply the facts available in the same manner as applied for the Preliminary Results.

### **SLK: Partial Facts Available for Missing Purchase Quantities**

**Comment 2:** The petitioners argue that the Department should apply AFA for those products sold to the United States during the POR for which SLK could not identify the suppliers or report purchase quantities as requested by the Department. The petitioners note that in the Preliminary Results, the Department stated that there were a number of observations reported in SLK's suppliers' FOP databases that were not included in its purchase CONNUM database. Further, after the Preliminary Results, the Department stated that if SLK did not purchase any of these CONNUMs during the POR, it must provide purchase quantities for these CONNUMs based upon the amount last purchased from each supplier. The petitioners point out that in its March 15, 2006, supplemental questionnaire response, SLK stated that although a portion of these sales were sold to the United States during the POR, they were not purchased by any of its suppliers during the POR. According to the petitioners, SLK did not identify purchase quantities prior to the POR as instructed by the Department for these CONNUMs, but instead stated that it is

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<sup>12</sup> We did not use Supplier A's standard production formula in the Preliminary Results because we found that it is not reliable (*i.e.*, not based on actual production experience) and could not be verified.

virtually impossible, within the time provided, to check all of SLK's records going back many years to determine when any of these CONNUMs were purchased by SLK.<sup>13</sup> Thus, the petitioners assert that the Department should apply as AFA the highest reported FOP from any supplier to SLK's U.S. sales of these CONNUMs for the final results.

SLK argues that the Department should continue to apply neutral facts available for those U.S. sales of merchandise not purchased by SLK during the POR. SLK claims that after its products are purchased from its suppliers, they are shipped to LDR's warehouse in Chicago. At this point, according to SLK, all products are commingled in LDR's inventory and sold to the final customer in the United States out of that inventory. Thus, it is not possible for SLK to link a particular U.S. sale to a particular producer or to pin-point exactly when the product was purchased. SLK argues that its reported sales, purchases, and production data during the POR are consistent with the methodology used in the investigation. SLK asserts that since its products are sold out of inventory, it is unavoidable that some of its less frequently sold products sold during the POR were not purchased or produced during the POR. Moreover, SLK contends that these products represent a very small percentage in volume and value of SLK's total U.S. sales reflecting the point that these products represent low-volume, low-turnover products that are sold and purchased infrequently. SLK maintains that it is virtually impossible to find when these products were purchased since the company only maintains records based on suppliers' names and not according to specific product information. SLK asserts that it would have to match every product to every supplier that it has ever done business with in order to track down information on these specific CONNUMs it has sold. Moreover, SLK notes that it no longer conducts business with some suppliers that may have produced these CONNUMs and thus, it would be extremely difficult to obtain such information from those suppliers.

SLK argues that in the investigation, the Department relied on the sales and production data pertaining only to the period of investigation to determine SLK's margin. SLK states that the Department verified its inventory system and found it appropriate to apply an average normal value with respect to the small number of products for which there were no data reported. Thus, SLK argues that the Department should continue to apply an average normal value derived from the identical or similar products produced by some of its suppliers during the POR.

**Department's Position:** For the final results, we continued to apply a simple average of the reported CONNUM-specific FOPs provided by the suppliers of CONNUMs where SLK could not provide its quantities of purchases from certain suppliers.<sup>14</sup>

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<sup>13</sup> See supplemental questionnaire response, dated March 15, 2006, at 3-4.

<sup>14</sup> We note that SLK erroneously argues that the Department should continue to apply an average normal value derived from the identical or similar products produced by some of its suppliers during the POR for the final results. The Department did not do this in the Preliminary Results. In the Preliminary Results, the Department applied, as neutral facts available, a simple average of the reported CONNUM-specific FOPs provided by the suppliers of that CONNUM where we were unable to weight average the CONNUM-specific FOPs of each supplier by SLK's actual purchased quantities.



SLK explained in its March 15, 2006, response that all of its products sold to the United States during the POR were sold directly from its inventory in its warehouse in Chicago. According to SLK, products are first purchased from each supplier and then shipped to SLK's warehouse in Chicago, where all products are commingled in SLK's inventory and then sold to the final customer in the United States. In order to stock its warehouse, SLK reported, it purchased the subject merchandise from several unaffiliated producers during the POR. As a result, most of the products sold to the United States were supplied by more than one of these producers, who reported different combinations of FOP inputs. To calculate a single normal value for a particular product sold to the United States during the POR, we combined the normal values calculated for each supplier of that CONNUM and weighted the normal values of each of the suppliers by the quantity of merchandise supplied to SLK by that producer during the POR.

Because SLK reportedly does not have a basis for tracking its inventory (e.g., LIFO, FIFO), and due to the fact that its purchase records are maintained only by the name of the suppliers and not by product, we believe that SLK cooperated to the best of its ability in its effort to report to the Department the quantities and FOPs of each of its suppliers for a majority of the CONNUMs it sold to the United States during the POR. See e.g., Notice of Final Results of Antidumping Duty Administrative Review: Steel Concrete Reinforcing Bars from Latvia, 68 FR 71067 (December 22, 2003), and accompanying Issues and Decision Memorandum at Comment 1. Furthermore, we find that the quantity purchase information that SLK was unable to report represents a very small percentage of overall volume of subject merchandise sold to the United States during the POR.

Thus, consistent with the Preliminary Results, the Department continued to calculate a simple-average FOP, as facts available, for each CONNUM for which we have FOP data but no purchase quantities for the final results because we find that SLK has acted to the best of its ability to provide the requested information. We note, however, that for future reviews of this proceeding, SLK and all other respondents must comply with all requests for information by the Department and therefore, should maintain the appropriate books and records to comply with these requests. If respondents are unable to comply with such requests, the Department may resort to the use of AFA absent the information on the record that is required by the Department to conduct its proceedings in accordance with section 776(b) of the Act.

### **SLK: By-product Offset for Scrap**

**Comment 3:** The petitioners argue that the Department should limit the amount of by-product offset to the amount of recycled scrap reported as an input for a small number of CONNUMs produced by one of SLK's suppliers. The petitioners claim that in the Preliminary Results, the Department granted a by-product offset for recycled inputs to the manufacturing costs of one of SLK's suppliers, but that the offset granted was greater than the input amount for recycled scrap

reported by that supplier.<sup>15</sup> The petitioners assert that SLK should only be granted an offset equal to the amount of recycled scrap that was reported as an input.

SLK counters that the petitioners' argument is disingenuous and ironic given the fact that the scrap offset reported by its supplier ("Supplier B") stemmed from the methodology strongly advocated by the petitioners during the LTFV investigation. See Final Determination of Sales at Less Than Fair Value and Critical Circumstances: Certain Malleable Iron Pipe Fittings From the People's Republic of China, 68 FR 61395 (October 28, 2003), and accompanying Issues and Decision Memorandum ("LTFV Investigation"). SLK notes that during the LTFV Investigation it participated in a six-week study, despite the tremendous burden, and submitted the input reports that were verified by the Department without any discrepancies in order to comply with the petitioners' proposed methodology. However, in its final determination, the Department decided not to rely on the six-week study and, instead, applied partial facts available for the scrap input.<sup>16</sup>

SLK argues that despite the reporting burden it faced previously in the LTFV Investigation, Supplier B, in this review, chose to report a recycled scrap offset based on the scrap amount that it recorded on a CONNUM-specific basis, instead of reporting an allocated amount. Thus, for some CONNUMs, the reported amount of scrap offset exceeds the reported amount of scrap input because the reported scrap input is an allocated amount while the offset amount is based on the actual amount recorded during production. SLK argues that it reported both amounts accurately and that these reported amounts should be used by the Department for the final results. Further, SLK contends that it should not be penalized for conforming its reported data to the methodology previously imposed by the Department in the LTFV Investigation and thus, the Department should continue to rely on the by-product quantities reported to the Department by Supplier B to calculate SLK's margin for the final results.

**Department's Position:** The Department finds that the by-product offset granted for recycled scrap should be limited to the amount of recycled scrap reported as an input. Consistent with the Department's determination in the LTFV Investigation, we find that it is impossible to produce one kilogram of metallic output with less than one kilogram of metallic input.<sup>17</sup> For this reason, the Department did not grant a by-product offset for scrap in that segment that was greater than the reported input and instead, resorted to the application of partial facts available for the scrap

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<sup>15</sup> See Memorandum to the File entitled, "Analysis for the Preliminary Results of the Administrative Review of the Antidumping Duty Order on Malleable Pipe Iron Fittings from the People's Republic of China: LDR Industries, Inc. and Beijing Sai Lin Ke Hardware Co., Ltd.," dated December 16, 2005 ("SLK Preliminary Analysis Memorandum") at page 9.

<sup>16</sup> See LTFV Investigation, 68 FR 61395 at Comment 1.

<sup>17</sup> Ibid.

input in the final determination.<sup>18</sup> In the current review, SLK did not provide any additional information which would alter the determination the Department made in the LTFV Investigation (i.e., that one kilogram of metallic output could not be produced with less than one kilogram of metallic input). Supplier B reported its recycled scrap input on an allocated basis because it maintains its production records based on its own product codes, which are different from the Department's CONNUMs. In order to comply with the Department's CONNUM methodology, Supplier B weight-averaged several of its products codes into a single CONNUM as required by the Department. However, Supplier B reported its recycled scrap production based on the results of the six-week study in the LTFV Investigation that the Department did not use in its calculations because of problems with SLK's reported material inputs. The Department found several problems, including problems with SLK's accounting for all inputs and outputs on a CONNUM-specific basis in its reported recycled scrap data.<sup>19</sup> The differences in the methodologies used by SLK in the investigation to report both the recycled scrap input and the recycled scrap output created an illogical result that could indicate that a supplier produced more than one kilogram of output from less than one kilogram of input. Thus, we continue to find the data which resulted from the study in the investigation to be unreliable and not appropriate for use in this review. Therefore, consistent with the LTFV Investigation, we did not grant a by-product offset that is greater than the reported input used to produce the subject merchandise. For these final results, we limited the amount of by-product offset granted for recycled scrap to the amount of recycled scrap input reported by Supplier B at the beginning of the production process.

#### **By-product Offset for SLK's Supplier**

**Comment 4:** SLK argues that the Department included the reported value for recycled scrap (i.e., scrap recovered from the production process and reintroduced into the production process) as part of the materials but did not reduce Supplier C's normal value by the amount of recovered scrap. SLK contends that Supplier C recycles all recovered scrap back into its production in a closed-loop process. SLK alleges that over time, the output of recycled scrap equals the amount of recycled scrap inputs. SLK argues that because all recycled scrap is reintroduced into the production process, Supplier C does not keep a record of recovered scrap in its normal course of business, and it is not necessary for Supplier C to keep such records. SLK contends that the scrap consumption is overstated unless the consumption is offset by the amount of recovered scrap. SLK argues that if the Department does not reduce Supplier C's normal value by the amount of recovered scrap, it should not account for any recycled scrap in calculating Supplier C's material costs for the final results.

The petitioners argue that the Department should continue to apply AFA for the final results for Supplier C because of continued deficiencies in Supplier C's reported data after the Preliminary Results.

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<sup>18</sup> Ibid.

<sup>19</sup> Ibid.

**Department's Position:** We continue to find that it is inappropriate to grant a by-product offset for Supplier C for recycled scrap. Supplier C did not provide documentation to substantiate the quantities of the by-product it produced during the POR. Supplier C reported that it does not keep a record of recovered scrap in its normal course of business and that such a record is not necessary given that the amount of recovered scrap on day one is equal to the amount of recycled scrap reintroduced on day two. See SLK's May 1, 2006, Case Brief at page 2. Without any records demonstrating the amount of recovered scrap, the Department cannot substantiate the by-product amount claimed by Supplier C. We also note that other suppliers also used a closed-loop process and reported slightly different amounts of by-product produced on day one than were reintroduced on day two because there was some loss incurred during production on day one. See SLK's May 4, 2005, Section D response. At issue here though is whether the respondent's production process actually generated a sufficient amount of scrap to cover what it is claiming as a by-product offset. Thus, in order to be able to grant a by-product offset, it is the Department's practice to require that respondents provide sufficient documentation of the actual by-product produced and the amount of the by-product reintroduced into the production process. See, e.g., Hontex Enterp., Inc. d/b/a Louisiana Packing Co. v. United States, 248 F. Supp. 1323 (CIT Feb. 13, 2003) (denying the degree of offset requested by plaintiff because it did not demonstrate its entitlement); and Final Determination of Sales at Less Than Fair Value: Steel Concrete Reinforcing Bars from the People's Republic of China, 66 FR 33522 (June 22, 2001), and the accompanying Issues and Decision Memorandum ("Steel Rebar from the PRC") at Comment 5c (denying a respondent's by-product offset because it was unable to demonstrate its entitlement). Because Supplier C failed to substantiate the by-products it produced, we did not grant Supplier C the by-product offset that it requested for these final results of review.

Finally, the Department did not apply AFA to Supplier C in the Preliminary Results and, therefore, the petitioners' argument is irrelevant with respect to this issue.

### **SLK: Double Counting of Steel Scrap and Pig Iron**

**Comment 5:** SLK contends that in calculating the normal value for the fittings produced by one of its suppliers ("Supplier D"), the Department double-counted Supplier D's reported amounts for cast iron steel scrap and pig iron. SLK argues that the Department should correct these errors for the final results.

The petitioners did not comment on this issue.

**Department's Position:** We agree with SLK and have removed the double-counting of steel scrap and pig iron for Supplier D for the final results.

### **SLK: Application of Average Packing FOP**

**Comment 6:** SLK states that in the Preliminary Results, the Department applied an average packing factor value to any packing factor that did not have a value for specific CONNUMs listed in its packing database submitted to the Department prior to the Preliminary Results. Following the Preliminary Results, SLK argues that it explained in its March 15, 2006,

supplemental response that certain packing materials were not used for certain CONNUMs sold to the United States during the POR. SLK contends that in response to the Department's post-preliminary questionnaire it has corrected its packing database to reflect a zero value for those packing factors not used for certain CONNUMs sold to the United States during the POR. SLK contends that the Department should use its revised packing database in its calculations for SLK for the final results.

The petitioners did not comment on this issue.

**Department's Position:** We agree with SLK in part and will use its revised packing database submitted on March 15, 2006, to calculate its margin for the final results. In the Preliminary Results, 70 FR at 76239, we stated that we would provide SLK with an opportunity to cure certain deficiencies which include reported FOPs for packing, and would revisit the facts available decisions for SLK for the final results in light of SLK's ability to remedy these deficiencies. We also stated that, pending SLK's ability to resolve these deficiencies in its data, if appropriate, we may resort to the use of AFA for the final results.<sup>20</sup>

According to 19 CFR 351.308(c), the Department may use facts available with an adverse inference when it has determined that the respondent "has failed to cooperate by not acting to the best of its ability to comply with a request for information." In our analysis of SLK packing data we found that the revised packing database that SLK submitted on March 15, 2006, is still missing all packing information for certain CONNUMs and contains contradictory packing information for other CONNUMs. Therefore, we determine that it is appropriate to use AFA for certain CONNUMs for which SLK reported contradictory packing information by reporting different packing FOP usage rates for the same CONNUM. For those CONNUMs for which SLK provided contradictory packing information, we applied the highest usage rate reported for each packing input for that CONNUM to calculate the packing expense for the final results. Furthermore, because SLK's response to our request for a revised packing database remains inadequate with respect to those CONNUMs for which there are no reported packing FOPs, we determine that it is appropriate to use AFA for these CONNUMs. For those CONNUMs for which SLK did not provide any packing FOPs, we applied as facts available the highest usage rate reported for each packing input in SLK's packing FOP database for the missing packing FOPs.

#### **SLK: Calculation of Total U.S. Price**

**Comment 7:** The petitioners argue that the Department should correct a ministerial error in the calculation of the total U.S. price in SLK's margin program. The petitioners point out that in the margin calculation program for SLK, the total U.S. price appears to be incorrect when compared to the reported quantity and value reported by SLK in its April 4, 2005, section A questionnaire response at Exhibit 1. The petitioners contend that the error resulted from a division in the

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<sup>20</sup> See also 19 CFR 351.308(c).

margin program where a multiplication should have occurred when converting SLK's reported quantity from pieces to kilograms.

**Department's Position:** We made a mathematical error when converting SLK's reported U.S. sale quantities from pieces to kilograms. Accordingly, we corrected this error in SLK's margin program for these final results.

**SLK: Use of Most Recently Submitted Data**

**Comment 8:** SLK states that on March 15, 2006, in response to the Department's supplemental questionnaire, it submitted revised U.S., FOP, packing and purchase quantity databases, which addressed and corrected issues noted by the Department in the Preliminary Results. SLK argues that the Department should base its final margin calculation on its revised data.

The petitioners did not comment on this issue.

**Department's Position:** We will use SLK's most recently submitted databases to calculate its final margin for the final results because it represents the most accurate data on the record of this review.

**SLK: Treatment of U.S. Warehousing Expense**

**Comment 9:** SLK contends that the Department erroneously treated its reported U.S. warehousing expense as a direct selling expense rather than as a movement expense.<sup>21</sup> SLK argues that under the Department's longstanding practice, all warehousing expenses are treated as a movement expense and points out that the Department's glossary of terms (available at <<http://ia.ita.doc.gov/glossary.htm>>) defines movement expenses as "expenses directly attributable to bringing the merchandise from the original place of shipment to the place of delivery of the U.S. or foreign market sale. These expenses may include freight and freight insurance charges, brokerage and handling fees, export taxes, and warehousing expenses incurred after the merchandise leaves the original place of shipment." SLK argues that as a result of this error, its CEP profit amount was overstated. SLK argues that the Department should correct this error for the final results.

The petitioners did not comment on this issue.

**Department's Position:** We treated SLK's reported U.S. warehousing expense as a movement expense rather than as a direct selling expense in its margin calculation program for these final results in accordance with 19 CFR 351.401(e)(2).

**Pannext: FOP Data**

**Comment 10:** The petitioners argue that the Department should calculate Pannext's margin for the final results using the revised FOPs reported on a CONNUM-specific basis. The petitioners

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<sup>21</sup> See SLK Preliminary Analysis Memorandum at Attachment 9.

note that after the Preliminary Results, the Department requested that Pannext provide a revised FOP database reporting average FOPs, weighted by quantity, for each CONNUM. As such, the petitioners contend that the Department should use, for these final results, Pannext's revised database submitted in response to the Department's request, as it better comports with the instructions in the Department's original and supplemental questionnaires. Further, the petitioners assert that the revised database submitted by Pannext more accurately reflects the quantities of production inputs than the simple average of CONNUM-specific FOPs (based on a simple average of the product-specific FOPs for all products in a CONNUM) applied in the Preliminary Results by the Department for Pannext's margin calculations.

Pannext contends that the Department should use the FOP database calculated on a product-specific basis, originally submitted to the Department prior to the Preliminary Results, as the FOPs reported in that database correspond to each specific product that was produced. According to Pannext, the use of the weighted-average CONNUM-specific FOPs it provided in response to the Department's supplemental questionnaire following the Preliminary Results would result in a less accurate calculation than using the product-specific FOPs reported in its original submission because the weighted-average CONNUM-specific FOPs do not reflect Pannext's actual products.

**Department's Position:** We find that for the final results we should use Pannext's most recently revised FOP database which reports factors on a CONNUM-specific basis. This method is more accurate because, as noted by the petitioners in their February 24, 2006, letter to the Department regarding the Department's selection of criteria for control numbers, the criteria selected by the Department recognizes commercially significant physical differences between subject merchandise.

As a general matter, the Department defines its CONNUMs based on what it determines to be the essential items that define the product, and not on items that the company thinks are distinctive characteristics. In this respect, a respondent's internal product codes may reflect differences between products that the Department would consider insignificant. As such, the differences between two products may be so insignificant that we would regard those products to be essentially the same product, and therefore, we would not want two separate costs for that product based on meaningless distinctions. Pannext has not demonstrated in this review that its records of product codes reflect significant differences in its products. Thus, the Department's abandonment of its CONNUMs in favor of Pannext and other respondents' product codes would not necessarily result in a more accurate calculation methodology because there is no evidence demonstrating that significant elements of the product are not being distinguished in our current CONNUM methodology. Furthermore, Pannext's revised FOP database properly reports a weighted-average CONNUM-specific value, weighted by the quantity of each product falling within the CONNUM, which is consistent with the methodology used by the Department in the LTFV Investigation. See Supplemental Questionnaire in the LTFV Investigation, at 6 (March 19, 2003); see also LTFV Investigation, 68 FR 61395 at Comment 1 (October 28, 2003). For these reasons, we used Pannext's March 27, 2006, revised data base for the final results.

**Pannext: Treatment of Ocean Freight**

**Comment 11:** In the Preliminary Results, the Department subtracted Pannext's reported freight surcharge (SURCHGU) from U.S. price in its margin calculations. Pannext noted it explained in its responses to the Department that the freight surcharge was an attempt to pass the rapid increase in international freight rates on to its customers, and was not included in the U.S. sales price listed on the invoice. As such, Pannext asserts that the freight surcharge is a billing adjustment that effectively increased the net invoice price and should be added to (and not deducted from) U.S. price. Pannext notes that to properly deduct the surcharge, it must be included in the U.S. price, which it was not, as required by section 772(c)(1)(A) of the Act. The petitioners did not comment on this issue.

**Department's Position:** We find that the freight surcharge should be added to the U.S. price, in accordance with section 772(c)(1)(A) of the Act. Pannext "reported the freight surcharge on an invoice by invoice basis only for those customers who accepted the freight cost increase." See Pannext Case Brief at 2. Because the freight surcharges at issue were negotiated with and accepted by those customers, they are included as part of the terms of sale and should be properly included as part of the U.S. sales price. Accordingly, for these final results the Department adjusted Pannext's margin calculation program to add Pannext's reported freight surcharge to U.S. price, as this charge was not included in its reported U.S. sales price.

**Pannext: Calculation of Entered Value**

**Comment 12:** Pannext notes that prior to the Preliminary Results, Pannext reported entered value based on a percentage discount of the U.S. gross price. As a result, entered value was erroneously reported as the discount amount, and not as the absolute entered value. Pannext revised its U.S. sales database to include entered value, where known, on a per-unit piece basis, in response to the Department's supplemental questionnaire issued after the Preliminary Results. The petitioners did not comment on this issue.

**Department's Position:** The Department finds that Pannext's revised U.S. sales database submitted after the Preliminary Results appropriately reported reliable entered values, where available, on a per-unit basis. Accordingly, for these final results the Department adjusted Pannext's margin calculation program to use its reported entered values, where appropriate, in accordance with 19 CFR 351.212(b)(1).

**Pannext: Calculation of Normal Value Using Facts Available**

**Comment 13:** In the Preliminary Results, the Department applied as facts available Pannext's calculated weighted-average margin of its other reported U.S. sales to those sales of merchandise sold out of inventory and not produced during the POR, for which Pannext could not report FOPs. Pannext provided the Department with a revised FOP database, reporting FOPs for those sales of merchandise sold out of inventory and not produced during the POR using an allocation formula suggested by the Department in a supplemental questionnaire issued after the Preliminary Results. Pannext contends that if the Department uses its revised FOP database,



there is no reason for the Department to apply facts available for those sales of merchandise sold but not produced during the POR for the final results. However, Pannext asserts that if the Department should decide to continue to apply facts available for the final results, the Department should correct Pannext's margin calculation program to include a quantity conversion and two freight exchange conversions. The petitioners did not comment on this issue.

**Department's Position:** The Department finds that Pannext's revised data comply with the Department's request with respect to the missing FOP data for certain sales sold but not produced during the POR. See Pannext's Supplemental Questionnaire Response, dated March 27, 2006. As Pannext reported all of its CONNUMs based on an allocation formula determined by the weight of the final products, the Department finds that using the same formula for the missing FOP data for the CONNUMs sold but not produced during the POR more accurately represents Pannext's actual usage of inputs for the missing COMMUN information than identifying the most similar CONNUM, which is a close estimation. Because there are no longer missing FOP data, it is no longer necessary for the Department to apply facts available for any transactions reported by Pannext for the final results. Accordingly, the Department used Pannext's revised FOP database in the final results.

**Chengde: Adverse Facts Available ("AFA")**

**Comment 14:** The petitioners argue that the Department should continue to apply total AFA for Chengde for the final results. The petitioners note that in the Preliminary Results, the Department stated that Chengde had extensive difficulty complying with the Department's filing and service requirements, as well as difficulty complying with the Department's requests for information, during the course of this proceeding. The petitioners also argue that because they were not served the proprietary version of Chengde's March 16, 2006, supplemental questionnaire response or the electronic U.S. sales and FOP databases, they did not have an opportunity to review and comment on the revised data. As such, the petitioners contend they have been severely prejudiced in their participation in the review of Chengde for the final results. Chengde did not comment on this issue.

**Department's Position:** We find that total AFA is no longer appropriate but, as explained below, continued to apply partial AFA. Although Chengde had various problems submitting the requested information during the course of this proceeding, we stated that we would grant Chengde one more opportunity after the Preliminary Results to respond to a supplemental questionnaire to correct deficiencies in its reported data. The Department only learned about Chengde's lack of service with respect to its proprietary version of its revised March 16, 2006, response through the petitioners' case brief submitted on May 1, 2006. Because the petitioners acknowledged in their case brief that they received the public version of Chengde's March 16, 2006, response, we believe they could have notified the Department at that time of Chengde's lack of service. Upon learning about Chengde's lack of proper service, the Department instructed Chengde to serve the petitioners a complete copy of the proprietary version of its response, and provided all interested parties an additional briefing period to comment on this response. Chengde responded to the Department's request and served the

proprietary version on the appropriate parties. Accordingly, the petitioners were given an opportunity to participate in the review of Chengde with regard to its revised response and databases. The Department did not receive any comments from interested parties regarding Chengde's proprietary version of its revised data in response to this opportunity. In our analysis of Chengde's March 16, 2006, revised database, we found that Chengde complied with almost all of the Department's instructions with respect reporting its data, except for water, as explained further below. As a result, we find that Chengde's data is sufficient for the purpose of calculating a margin for Chengde. Therefore, we find that Chengde has largely complied with the Department's filing and service requirements and the application of total AFA is no longer appropriate for the final results.

However, in our Preliminary Results we noted that should Chengde fail to provide data requested by the Department within the requested time frame, we may continue to use AFA for Chengde for the final results of review. While total AFA is no longer appropriate, we note that in Chengde's May 14, 2006, submission, it reported all of the requested information except for water. As Chengde consistently reported water in its previous submissions, the Department applied the highest reported water value from Chengde's previous FOP databases as AFA for the final results. See Memorandum to the File entitled, "Analysis Memorandum for the Final Results in the 2003-2004 Administrative Review of the Antidumping Duty Order on Malleable Iron Pipe Fittings from the People's Republic of China: Chengde Malleable Iron General Factory Chengde Final Analysis Memorandum," dated June 21, 2006 ("Chengde Final Analysis Memorandum").

#### **Chengde: Recycled Scrap**

**Comment 15:** The petitioners argue that if the Department decides to use Chengde's March 16, 2006, revised response to calculate a margin for the final results, the Department should add recycled scrap malleable iron as an input prior to making an offset for recycled scrap. Chengde did not comment on this issue.

**Department's Position:** Chengde did not claim an offset for its reported by-product recycled scrap malleable iron, nor did it provide documentation in support of its reported by-product produced during the production of subject merchandise. In cases where a company reintroduces the by-product into production, it directly reduces the material costs of the subject merchandise and, therefore, the by-product can be deducted from the cost of manufacture. However, in accordance with the Department's practice, we did not grant an offset for recycled scrap in Chengde's margin calculation program because Chengde did not provide any documentation to support its production and reintroduction of its reported by-product into its production process as requested and required by the Department. See, e.g., Hontex Enterp., Inc. d/b/a Louisiana Packing Co. v. United States, 248 F. Supp. 1323 (CIT Feb. 13, 2003) (denying the degree of offset requested by plaintiff because it did not demonstrate its entitlement); and Steel Rebar From the PRC, 66 FR 33522 at Comment 5c (denying a respondent's by-product offset because it was unable to demonstrate its entitlement). Accordingly, we did not include recycled scrap in our margin calculation program for Chengde for the final results. See Chengde Final Analysis Memorandum at 6.

**Treatment of Steel Sand, Woven Bags, Cooling Liquid, Clay, Firewood, and Silicon Sand**

**Comment 16:** SLK argues that the Department should treat steel sand, woven bags, clay, firewood, silicon sand, and sand as a part of overhead rather than as separate material factors. SLK contends that it is the Department's normal practice to classify minor indirect materials as part of overhead expenses, rather than valuing them separately as material factors.<sup>22</sup> See e.g., Synthetic Indigo from the People's Republic of China: Notice of Final Determination of Sales at Less Than Fair Value, 65 FR 25706 (May 3, 2000), and accompanying Issues and Decision Memorandum ("Indigo") at Comment 8 where the Department treated minor indirect materials such as heat conductive oil as part of overhead.

SLK argues that in this case, steel sand, woven bags, clay, firewood, silicon sand, and sand are all indirect materials that are properly accounted for as factory overhead rather than as separate factors of production. Specifically, SLK contends that steel sand is used in the machinery during the tumbling process and is not consumed as part of the fitting. SLK contends that firewood is used to start the cupola and for drying bricks and it is not used as a main source of energy consumed to produce the subject merchandise. SLK asserts that silicon sand and sand are used to line the molds and are reused. SLK contends that woven bags are only used to transport the products to its warehouse and are not used for packing the final merchandise. Furthermore, SLK notes that in the investigation, the Department verified that woven bags were recycled or reused by SLK in its production of subject merchandise. SLK argues that for these reasons, the Department should not value these materials as material factors.

The petitioners contend that for the Preliminary Results, the Department calculated financial ratios by treating various job and process charges as material inputs even though the surrogate producers had identified them as overhead. The petitioners argue that by removing this item from the numerator of the overhead ratio, it also increased the amount of material, labor and energy in the denominator over which the overhead amount was divided to determine the overhead rate. As a result, the petitioners assert that the Department reduced the overhead rate in order to account for expenses by valuing the inputs rather than valuing the processes themselves. The petitioners contend, therefore, that the Department should continue to value these inputs (i.e., steel sand, woven bag, cooling liquid, clay, firewood, and silicon sand) as separate material inputs rather than as components of overhead.

The petitioners additionally argue that the Department has, in other cases, treated these items as separate inputs rather than as overhead. For example, the petitioners assert that in the investigation of the current proceeding, the Department disagreed with SLK's argument that firewood should be treated as an item of overhead and treated this input as a direct material.<sup>23</sup> Also, the petitioners contend that sand has been found to be a material input in the investigation of another iron and steel product and cites Notice of Final Determination of Antidumping Duty Investigation: Certain Hot-Rolled Carbon Steel Flat Products from Romania, 66 FR 49625

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<sup>22</sup> SLK cites Steel Rebar from the PRC 66 FR 33522 at Comment 5d.

<sup>23</sup> See LTFV Investigation, 68 FR 61395 at Comment 8.

(September 28, 2001), and the accompanying Issues and Decision Memorandum (“Hot Rolled”) at Comment 4. Further, the petitioners contend that in this case, sand is also more than an incidental component of production. Therefore, the petitioners argue that the Department should continue to value the items identified by respondents as separate material inputs rather than as overhead for the final results.

**Department’s Position:** We find that it is appropriate to value firewood as a direct material in the calculation of normal value. However, steel sand, woven bags, cooling liquid, clay, and silicon sand are most appropriately categorized as overhead items in this proceeding. The Department declines to value separately minor inputs used in the production of subject merchandise because these minor inputs are captured in the overhead ratio calculated from the surrogate company’s financial statement. This issue is decided on a case-by-case basis in accordance with section 773(c)(1) of the Act. In this case, because steel sand, woven bags, cooling liquid, clay, and silicon sand are reused and considered to be minor inputs used in the production of subject merchandise, we declined to value these items independently as they are likely to be captured in line items used to calculate the surrogate financial overhead ratio applied to calculate respondents’ normal value. See, e.g., Steel Rebar from the PRC, 66 FR 33522 at Comment 5d (determining certain minor inputs to be appropriately classified as overhead and not direct materials); and Indigo, 65 FR 25706 at Comment 8. On the other hand, we valued firewood as a direct input, consistent with the LFTV Investigation, because firewood is used to start heating the cupola to melt the iron and steel scrap in the first stage of the production process and is, therefore, not an incidental energy source.<sup>24</sup>

The petitioners argue that the Department should value all of these inputs as separate material inputs rather than as components of overhead because the Department reduced the overhead rate by treating various “job and process charges” as material inputs rather than as overhead. Therefore, according to the petitioners, the Department must value these materials to accurately calculate the respondents’ expenses. This argument, however, is misplaced. The line item for “job and process charges” in the 2002-2003 financial statements of Vishal Malleables Limited, unless otherwise noted, does not typically represent all, or even a significant amount, of the material costs incurred by the Indian company. Therefore, the movement of “job and process charges” from overhead into direct labor in the surrogate financial ratio calculations does not remove the expenses for indirect materials from overhead expenses. As noted in the Preliminary Results, we moved this line item from overhead (i.e., the numerator in our overhead ratio calculation) to direct labor (i.e., the denominator in our overhead ratio calculation) to accurately reflect the level of integration of each respondent company represented in our calculations. See Preliminary Results, 70 FR at 76237. Two respondent companies did not report out-sourcing any of their production to outside contractors. One respondent company reported that it purchased subject merchandise from several producers, two of which are not fully integrated. These two producers reportedly out-sourced certain job processes to sub-contractors during the POR. In this

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<sup>24</sup> See LTFV Investigation, 68 FR 61395 at Comment 11; see also e.g., Notice of Final Determinations of Sales at Less Than Fair Value: Brake Drums and Brake Rotors from the People’s Republic of China, 62 FR 9160, 9169 (February 28, 1997).

case, we accounted for the costs of these processes by valuing the actual inputs used in these processes, rather than valuing the processes themselves, and included them in the materials, labor, and energy portion in the respondent's build-up of normal value. As such, we did not include these types of expenses in our overhead financial ratio (i.e., in the numerator) but instead accounted for them by directly valuing each of these expenses. The petitioners' argument incorrectly assumes that "job process charges" includes all incidental material input expenses associated with items such as steel sand, woven bags, cooling liquid, clay, and silicon sand. Therefore, directly valuing these inputs in respondents' calculations would result in double-counting of these expenses as we find that these items are already accounted for in the overhead of the Indian surrogate financial companies.

### **Freight: Application of Sigma Rule**

**Comment 17:** The petitioners argue that the Sigma rule for selecting the distance for NME inland freight should only be applied where the respondent identified the location of the NME producer of an input. In the Preliminary Results, the Department calculated the freight costs based on the shorter of the reported distance from the domestic supplier to the factory or the distance from the port to the factory in accordance with the decision of Sigma Corporation v. United States, 117 F. 3d 1401, 1407-8 (Fed. Cir 1997) ("Sigma"). The petitioners argue that for suppliers that did not produce the actual input (i.e., distributors), the Department's adjustment for NME inland freight is not in accord with Sigma. Specifically, the petitioners claim that by applying the decision handed down in Sigma to distributors of inputs, the Department is failing to capture the cost of inland freight from the actual producer of the input to the distributor.

The petitioners claim that most of the population in the PRC live within 250 miles of the coast and that the inputs in this case are typically mined inland and must be transported from locations inland to distributors located near the coast. Moreover, the petitioners argue that by not capturing the distance between the original producer of the input and the distributor of the input, the inland freight for a respondent's NME purchases is understated. The petitioners state that the supplemental questionnaire sent by the Department to SLK on July 12, 2005, requested SLK to identify whether its input suppliers are producers of its reported inputs or non-producing distributors and to report the distance that the factor was transported from the NME supplier.<sup>25</sup> The petitioners argue that where the NME producer of the input is unknown, the Department should apply its longstanding practice prior to Sigma of calculating the inland freight based on the distance between the respondent's factory and the port for the final results.

Pannext counters that the petitioners' argument with regard to the application of the Sigma rule is similar to the argument raised by the petitioners in the LTFV investigation. In the final determination of the investigation, Pannext notes that the Department concluded that "in Sigma,

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<sup>25</sup> The petitioners cite the respondent's August 10, 2005, supplemental questionnaire response, but it was in the Department's supplemental questionnaire dated July 12, 2005, where the Department asked the respondents to report the distance between the factory and their suppliers and not the distance between the factory and the producers. See supplemental questionnaire sent to SLK, dated July 12, 2005, at page 16, and supplemental questionnaire response for SLK, dated August 10, 2005, at pages 15, 19, 21, and 25 .

the court did not make a distinction as to whether the supplier is a producer or a reseller of the input, but the court did use the distance to the producer because the material input was purchased from the producer and a reseller was not otherwise mentioned. It is the Department's practice to use the distance to the supplier, which we generally consider to be the producer for this purpose."<sup>26</sup> Further, Pannext contends that it reported in its May 4, 2005, questionnaire response a list of each of its suppliers, the means of transport, and the distance traveled from supplier to the factory. Pannext argues there is nothing on the record of this review to suggest that the suppliers were anything other than producers of the inputs, and thus, the Department acted in accord with its administrative precedent. As such, Pannext claims that the petitioners' argument must be rejected as it is unsupported by any information on the record.

SLK argues that the Department properly calculated the respondents' freight costs based on the shorter of the reported distance from domestic supplier to the factory or distance from the port to the factory in accordance with the decision in Sigma. SLK argues that the Sigma rule reflects the premise that although the market CIF (*i.e.*, cost, insurance, and freight) price serves as the value of the input at its NME domestic source, it could also serve as a surrogate for a CIF price of an imported input available to the producer at a corresponding NME port, and that, within a market economy context, the producer would likely source the input from the nearer of the NME port of entry or the domestic port.<sup>27</sup> SLK also argues that in Sigma, the court did not make a distinction as to whether the supplier is a producer or a distributor of the input. Accordingly, SLK argues that the court did not use the distance to the producer because the material input was purchased from the producer and a reseller was not otherwise mentioned.<sup>28</sup>

SLK argues that the Sigma rule assumes that the respondents pay the same surrogate price for an input regardless of source and that a respondent would purchase from a reseller only where the price, inclusive of freight, would be equal to the price charged by the input producer. Thus, SLK claims there is no basis to assume that the inland freight applicable to the input purchase would be different for an input purchased from a local reseller compared to that purchased from a local producer. Moreover, SLK argues that in the LTFV investigation, the Department agreed that, if the respondent pays the same price for imported and domestically produced inputs, the Sigma rule dictates that a respondent would purchase from the regional producer rather than carting imported materials from the port. Recognizing that the respondent is generally not able to identify the original producer of the input where the input was purchased from a distributor, SLK notes that in the LTFV investigation, the Department relied on the distance to the local producer (*i.e.*, distributor), rather than the distance to the port.<sup>29</sup>

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<sup>26</sup> See LTFV Investigation, 68 FR 61395 at Comment 12.

<sup>27</sup> Ibid.

<sup>28</sup> Ibid.

<sup>29</sup> Ibid.

According to SLK, its producers supplied a list of each of their material suppliers, and the Department did not request the respondents to report the distance from the factory to the local producer of the input where the supplier was a distributor and not the producer. Thus, SLK argues that the Department must assume, under the Sigma rule, that the producer of the input would be located at least as close to the respondent as the distributor. Moreover, SLK argues that applying the distance from the factory to the port for inputs purchased from distributors would effectively amount to applying AFA to the respondents, despite the fact that the respondents cooperated fully by providing all information requested by the Department. For these reasons, SLK argues the Department should continue to apply inland freight distances based on the shorter of the distances from the factory to the actual supplier of the input or from the factory to the nearest port in accordance with Sigma for the final results.

**Department's Position:** For the final results, we applied the Sigma rule, using the shorter of the reported distances between the input supplier and the factory or the factory to the port of exit. See Sigma, 117 F.3d at 1407-1408. In the instant review the information on the record does not indicate whether the respondents reported purchases of material inputs from non-producing resellers or producers, and we only requested them to identify the "distance the factor was transported from the supplier (NME sources) or the distance from the port (market economy sources) when transportation expenses were incurred in an NME currency."<sup>30</sup> SLK therefore appropriately responded to the specific information requested by the Department.

In Sigma, the court did not make a distinction as to whether the supplier was a producer or a reseller of the input, but used the distance between the factory and the supplier, who happened to be the producer. See, Sigma 117 F.3d at 1407-1408. As noted above, the Department did not specifically request in its FOP spreadsheet that respondents report the distance from the factory to the upstream producer of the input in cases where the supplier was a distributor and not the producer. As such, the respondents cooperated fully by providing all the information requested by the Department. Therefore, we continue to apply the Sigma rule consistent with the Preliminary Results, using the shorter of the reported distances between the input supplier and the factory or the factory to the port of exit for these final results.

### **Valuation of Water**

**Comment 18:** SLK argues that the Department should not value water as a separate FOP because water is included as a part of factory overhead expense. SLK contends that water is used for cooling and cleaning the pipe fittings and should not be considered a raw material in the production of pipe fittings. SLK further asserts that all producers, even those Indian producers on which the surrogate overhead ratio is based, account for water as part of overhead expense, rather than as a material cost. According to SLK, the inclusion of water as a material input in this case would double-count the cost of water. SLK cites Sebacic Acid from the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 65 FR 49537 (August 14, 2000), and accompanying Issues and Decision Memorandum at Comment 3 to support its contention that water should not be valued as a direct input.

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<sup>30</sup> See Supplemental Questionnaire dated July 12, 2005, at column 11 of the FOP spreadsheet.

The petitioners state that in the investigation of the instant proceeding and in more recent cases, the Department separately valued water as an input rather than as overhead. The petitioners contend that in Automotive Replacement Glass Windshields from the People's Republic of China: Final Results of Administrative Review, 69 FR 61790 (October 21, 2004), and the accompanying Issues and Decision Memorandum at Comment 1, the Department stated that it would determine whether to value water as a direct input separately on a case-by-case basis in accordance with section 773(c)(1) of the Act. The petitioners contend that in this case, because water is “used for cooling and cleaning of fittings,” it is an essential element in the production of the subject merchandise. Therefore, the petitioners maintain that the Department should continue to value water as a separate input rather than as overhead for the final results.

**Department's Position:** We find that water should be valued separately as an input rather than treated as overhead in this case. Cooling and cleaning of fittings is essential to the production process, and significant amounts of water are used in the production of subject merchandise; *i.e.*, water is not incidentally or occasionally consumed in production of the subject merchandise but is a significant material input. *See, e.g., Fresh Garlic from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 70 FR 34082 (June 13, 2005), and accompanying Issues and Decision Memorandum at Comment 3. Therefore, we have continued to value water as a direct input for the final results.

#### **Wooden Pallet Clerical Error**

**Comment 19:** SLK contends the Department incorrectly calculated the surrogate value for wooden pallets in kilograms in the Preliminary Results. SLK noted the Indian import statistics from the World Trade Atlas used by the Department lists the quantity of wooden pallets in numbers or pieces, and not in kilograms. SLK argues the Department should correct the calculation for wooden pallets to numbers/pieces, and divide the per-pallet value by the weight of each pallet to apply the correct surrogate value. The petitioners did not comment on this issue.

**Department's Position:** The Department made an error in the Preliminary Results when calculating the surrogate value for wooden pallets. Accordingly, for the final results, we changed the surrogate value to reflect pieces rather than kilograms as the unit of measure for this input. For SLK, Chengde and SCE, we used their own reported weight of one wooden pallet in the conversion to pieces and adjusted their margin calculation programs accordingly for the final results. *See* “Memorandum to the File entitled, “Analysis for the Final Results of the Administrative Review of the Antidumping Duty Order on Malleable Pipe Iron Fittings from the People's Republic of China: LDR Industries, Inc. and Beijing Sai Lin Ke Hardware Co., Ltd.,” dated June 21, 2006; Chengde Final Analysis Memorandum; and Memorandum to the File entitled, Analysis Memorandum for the Final Results of the 2003-2004 Administrative Review of Antidumping Duty Order on Certain Malleable Iron Pipe Fittings from the People's Republic of China: SCE Development (Canada) Co., Ltd.,” dated June 21, 2006. As Pannext constructed its own pallets out of wood, the change to this surrogate value does not affect Pannext's margin calculation program.



### **Recommendation**

Based on our analysis of the comments received, we recommend adopting all of the above positions. If these recommendations are accepted, we will publish the final results of the reviews and the final dumping margins for all of the reviewed firms in the Federal Register.

Agree \_\_\_\_\_ Disagree \_\_\_\_\_

\_\_\_\_\_  
David M. Spooner  
Assistant Secretary  
for Import Administration

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Date